

**GOVERNANCE AND TRANSPARENCY IN EXTRACTIVE INDUSTRY AND
NATURAL RESOURCE MANAGEMENT: CASE OF UGANDA**

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TABLE OF CONTENTS

INTRODUCTION AND BACKGROUND	2
OVERVIEW ABOUT UGANDA’S DEVELOPMENT	2
Overview of the Paper	3
Pre-colonial, colonial and post-colonial experience;	3
Mineral resource endowment;.....	4
Potential and prospects;	5
Initiatives;	6
PETROLEUM AND NATURAL GAS EXPLORATION, EXPLOITATION AND DEVELOPMENT	8
REGULATORY MECHANISMS FOR TRANSPARENCY, COORDINATION, ACCOUNTABILITY AND DEVELOPMENT IN UGANDA	9
Policy mechanisms.....	9
Legal mechanisms.....	10
Institutional mechanisms	10
Tax revenue governance mechanisms	11
POLICY, LEGAL, INSTITUTIONAL AND TAX GOVERNANCE CHALLENGES TO THE EXTRACTIVE SECTOR RESOURCES IN UGANDA.....	12
LEGAL CHALLENGES	12
POLICY CHALLENGES.....	14
Institutional challenges	16
ENVIRONMENTAL CHALLENGES.....	18
OTHER ISSUES IN THE MINERAL SECTOR	18
WHAT THEN SHOULD BE THE ROLE OF DIFFERENT STAKEHOLDERS?.....	19

INTRODUCTION AND BACKGROUND

Firstly, it is widely agreed that Good governance is one of the critical aspects in supporting any country's extractive industry and natural resource management, if considerable national development is something to go by. Indeed, debate directed at forging good governance and transparency in the management of the industry has been central to prominent events, e.g. the Great 8 (G8) nations' summit in Germany during 2007 and during June 2010 in Canada. In 2007, this was even so in particular reference to Africa, on how good governance and extractive resources could contribute to the roads to reduction of massive poverty.

Secondary, the extractive industry has overall tended to be a matter of international attention. In the case of Africa, there is demonstrable evidence that it has, unfortunately, often bred despotic regimes. This being the genesis of the "resource curse", has precisely been a key factor in the lack or rather mischievous public accountability and transparency characterised by all or some of these tendencies; stagnant development, widespread corruption, sharp economic disparity, and conflict¹ in the extractive industry and natural resource management (Nigeria, Gabon, etc).

OVERVIEW ABOUT UGANDA'S DEVELOPMENT

Uganda has indicated her development path through the 5-year National Development Plan (NDP) that was officially launched in April 2010, to replace the previous 3-year phased PRSPs called the Poverty Eradication Action Plan (PEAP) whose implementation started in 1997. The NDP forecasts annual GDP growth over the said period at an average of 7.2 percent, with nominal per capita income increasing from 506 in FY 2008/09 to about 850 in FY 2014/15; with poverty line at 24.5 percent from the current 31 percent². The NDP is locally and foreign donor supported through bilateral and multilateral foreign aid- whether as loans or grants in financial or technical/ capacity building. It is clear, nonetheless, that the extractive sector (such as the minerals, fishing and forestry sub-sectors) is vital in contributing to sustainable and equitable national development, if issues of good governance (e.g. accountability and transparency) are taken into serious consideration. It can be noted that, for instance, Uganda's donor dependency has been reducing (with domestic revenue collection improving by 16 percent³ between fiscal period/ FY 2005/06 and 2006/07, while donor funding was about 46 percent of budget support, declining to 38.7 percent in FY 2007/08, about 30 percent during the FY 2008/09⁴ and now about 24 in FY 2010/2011).

¹ SIEGLE, JOSEPH (2006), Prepared for the workshop, "Africa Beyond Aid," April 3-4, 2006, Potsdam, Germany, hosted by the Brenthurst Foundation in conjunction with the Konrad Adenauer Stiftung and DANIDA. (Joseph Siegle is Senior Advisor for Democratic Governance at Development Alternatives, Inc.)

² Government of Uganda, **National Development Plan (NDP) 2010/11-2014/15**, April 2010, p. i

³ Uganda Debt Network, **The 2006/07 National Budget: Shortfalls in Pro-Poor Spending**, Budget Policy Brief, April 2006

⁴ Uganda, **Budget Speech**, FY 2008/09

Overview of the Paper

While the extractive industry is essentially to do with the wide range of non-renewable resources, this paper examines the mineral sub-sector as part of the general extractive industry in Uganda. Oil and gas have received particular elaboration, premised on the vitality of this resource that is new to Uganda and with likely issues pertaining to good governance. The paper further attempts to articulate the policy, legal and institutional infrastructure in place, the challenges and plausible recommendations. By its very nature, this topic is bound to generate controversy, especially in a forum that brings together Government officials, civil society actors, the private sector coupled with researchers and the academia.

Historical overview of Uganda's experience, endowment, potential, prospects of and initiatives in the Extractive sector; case of minerals sub-sector

Pre-colonial, colonial and post-colonial experience;

History says that the mining sub-sector in Uganda dates back to the ancient and pre-colonial times, with widespread iron related activities. What could be termed as modern mining in Uganda, however, is traced around the mid-1920s, with peak production levels between 1950s and early 1970s when it accounted for an approximate 30 percent⁵ of Uganda's total export earnings. So, the mineral resources have been important to the survival of both the domestic and foreign markets.

Uganda's political and economic turmoil since independence from the British direct rule on 9th October 1962 have had a negative toll on the minerals sub-sector. So, the decline in production was not out of resource depletion, but rather poor governance and mismanagement. This mismanagement, for instance, manifested itself in victimizing and chasing away of investors based on skin colour and race in the 1970s under the Presidency of the multi-titled VSO, M.C, Papa, His Excellency, Conqueror of the British Empire, Field Marshal Idi Amin Dada. This was coupled with civil wars, archaic political leadership and insecurity during the 1970s and 1980s amidst poor government policies, poor transparency and accountability in general and in the extractive sector in particular.

Uganda has had wars till about 4 years ago where the forces of the Lord's Resistance Army (LRA) were pushed into jungles of DR Congo and Central African Republic. To-date, Uganda's semi-arid Karamoja sub-region in north east, is host to armed warriors that are still a threat to peace and security; which are pre-requisites for full utilization of the extractive sector in that mineral-rich part of the country.

⁵ MEMD, Investing in Uganda's Mineral Sector, 2005, p.3

Mineral resource endowment;

Uganda is resource rich with the broad a) metallic and b) non-metallic mineral resources, mainly in the south and western parts, but there are mineral traces all around the country, including in Karamoja.

The non-metallic resources include;

- i) Industrial minerals such as gypsum, salt, lime, graphite, phosphates, kaolin and other clays
- ii) Building related minerals such as cement, aggregate stones, limestone and marble.
- iii) Mineral fuels like oil and gas.

The metallic resources include the following;

Tungsten/wolfram, tin, lead and iron ore. Others are gold, beryllium/ beryl, copper and cobalt.

Table 1: Samples of Uganda's Mineral production statistics (1995 – 2004)

Mineral	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Gold (grams)	1,507	3,000	6,400	8,150	4,730	55,980	14,200	25,650	32,000	178,000
Tin Ore (tons)	4.29	0.38	1.81	1.10	-	-	-	-	1.0	2.7
Wolfram (tons)	17.31	-	1.76	7.83	0.32	0.12	26.69	24.82	2.17	17.88
Tantalite/ Columbite (t)	1.82	-	-	-	256.3	2.71	11.09	6.46	16.24	4.20
Iron Ore (tons)	7.0	200	2,432	785	-	2,400	1,236	-	-	-
Vermiculite (t)	-	-	-	-	-	-	220	664	1,724	2,688
Cobalt (t)	-	-	-	-	76.74	410.75	511.99	-	-	219.57
Limestone (tons)	209,512	159,479	919,353	140,235	121,521	253,032	229,972	140,022	226,408	272,325
Gypsum (tons)	5,467	2,281	-	143.35	256.6	-	-	5.12	42.79	163.63

Source: Department of Geological Survey and Mines, Entebbe, Uganda

Potential and prospects;

In spite of the long history of mineral exploration, production and development, the mining sub-sector in Uganda has by and large performed at low ebb. In various parts of the country there has neither been adequate exploration and exploitation of extractive resources. The trends of activities in the sub-sector, however, are promising and so is the potential of the sub-sector. Uganda, for instance, currently boasts of over 100 documented occurrences of gold, base metals and industrial minerals⁶. It is precisely for this fortune and value in the minerals sub-sector that governance issues of transparency, accountability and natural resource management are under due consideration in this paper.

Table 2: Value of mineral exports for Uganda (1995 – 2004)

Year	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Value (US \$ m)	50	53.4	81.3	-	-	120	-	73.29	49.69	56.93

Source: Department of Geological Survey and Mines, Entebbe, Uganda

From the tabulation above, there has been effort in Uganda to rejuvenate the mining sub-sector. The sector has 1990s generally grown at an approximate 11 percent annually, in respect to the following a) licensing b) exploration c) production d) value of mineral exports e) subsequent revenue accruals in form of mineral royalties and exports.

Under the extractive industry and other industries, one of Uganda's promising resources is oil and gas. The oil potential is estimated at 2 billion barrels, indicating that Uganda can produce between 100,000-350,000 barrels per day of oil for at least 20 years. More specifically, a USD 135 million investment by Heritage Oil Company in the oil exploration stake in Blocks 1A and 3A in western Uganda is said to have so far (2010) registered a single transaction fortune of about USD 1.5 billion from 50 percent shares in oil extraction endeavors, according to the sources privy to the recent Heritage partial sale of its shares to another company, Tullow oil. Note that Uganda's export total earnings in 2009 was worth USD 1.6 billion. Government of Uganda expects to earn more than USD 404 million in taxes when the sale is finally concluded, of which Heritage has already paid at least USD 121 million to Government⁷. This amount of revenue of USD 404 (nearly 1 billion Uganda shillings) for the Government is significant, for instance, given the FY 2010/11 national budget of about 5 trillion Uganda shillings).

⁶ MEMD, Investing in Uganda's Mineral Sector, 2005, p.18

⁷ Monitor Publications, Daily Monitor, 29th July, 2010

Initiatives;

To improve the status of the minerals sub-sector in Uganda, Government announced in May 2004 that a sum of USD 42 million was being injected in the sub-sector towards processes geared at increasing export base and revenues thereof. This was a loan from the World Bank, African Development Bank (AfDB) and Nordic Development Fund (NDF). Still, in July 2004, Government announced the injection of an additional approximate of USD 4.5 million directed to the development of attendant amenities, particularly, roads and power line slinking to the areas with mineral deposits, as to ease transportation and production. In both injections, the anticipated revenue amounted to about USD 75 million only. These initial steps eventually gave birth, *inter alia*, to the 5-year Sustainable Management of Mineral Resources Project (SMMRP) and MRCBP.

SMMRP; The objective of the project is to strengthen the capacity of Government of Uganda (GoU) to develop a sound minerals sector, based on private investments and improvements in selected artisanal and small-scale mining areas. The 5-year project started in August 2004, with joint funding loans from WB/IDA (USD 25 million), AfDB (USD 5.35 million), NDF (USD 6 million) and GoU, to end on 30th June, 2009⁸. The SMMRP was on 23rd September, 2008, extended, with an additional IDA USD 5 million credit, to 30th June, 2011. The IDA credit has a grace period and maturity of 10 years and 40 years, respectively.

The SMMRP⁹ was to build institutional capacity for the Department of Geological survey and Mines through, amongst others a) human resources development b) surveying and compiling geo-information c) establishing and maintaining information management systems and geological maps d) provide essential geological, resource and mineral rights information to potential investors and other user agencies. Others included e) promoting private investment in mineral exploration and mine development f) establishing a transparent mineral titles administration system to make the mining sector internationally attractive g) monitoring and enforcement with sectoral laws and regulations h) facilitating sustainable development/ funding of small-scale mining investments as an economic option in rural areas and i) fostering the establishment of cross-sectoral linkages.

MRCBP; To enhance the delivery of the SMMRP, a similar initiative, Mineral Resources and Capacity Building Project (MRCBP), by GoU received an approval of a grant worth USD 7.7 million from the AfDB on 29th September, 2008. The project was to be implemented through procurement of a number of goods, works and services of which the major ones¹⁰ were a) equipment for the laboratories at Entebbe (rock sample laboratories, field equipment, geological storage and museum) b) airborne geophysical surveys; airborne data acquisition, generating information on surface and sub-surface geology, data processing, publication, etc c) establishing a data network and upgrading five seismological data stations and d) on-job and short-courses training of staff at Department of Geological Survey and Mines.

⁸ <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS>

⁹ MEMD, **Investing in Uganda's Mineral Sector**, 2005, p.6

¹⁰ MEMD, **General Procurement Notice**, (not dated), <http://www.energyandminerals.go.ug/>

Note; In spite of good intentions, issues of transparency while concluding the financing deals, wider participation beyond a few Government officials and the managers of the said banks to include other key stakeholders e.g. CSOs and Parliament remained (and continue to be) a critical challenge in management of public affairs. The adherence to the whole process guiding loan acquisition and public finance management in Uganda, anyway, remain of great concern. Various CSOs, for instance, are concerned that the terms under which some of the financial deals and transactions are concluded are often not necessarily in favour of the majority Ugandans, specifically due to the rushing involved in loan acquisition, the repayment mechanisms and Government prudent utilisation and management of national and borrowed resources; including those channelled to the extractive sector in Uganda. Of course, it is also interesting that looking at the dates above, one loan was being concluded a few days after another.

PETROLEUM AND NATURAL GAS EXPLORATION, EXPLOITATION AND DEVELOPMENT

Significant prospecting for petroleum and natural gas in Uganda was first undertaken by a government geologist, E.J Wayland in the 1920s. He documented the existence of substantial hydrocarbon volumes in the country's Albertine Graben/ Albert lake basin region in the Western Rift valley stretch of Western Uganda. The region covers an approximate geographical area of 20,000 square km, from the Uganda-Sudan boarder in the north to Lake Edward in the south and further extends to the Democratic Republic of Congo in the west.

More attention for the exploration resumed in the late 1980s getting more intensified in the subsequent decades. To-date, the country has licensed over 18 oil companies to prospect for oil and gas¹¹. They include the United Kingdom (U.K) based Heritage Oil and Gas Ltd that was doing exploration in the southern part of lake by 1997. In November 1997, Hardman Petroleum (Uganda) Pty Ltd with 45 percent, Australia based Balmain Resources Pty Ltd with 10 percent and the Planet Oil Holdings Ltd from the U.K with 45 percent, secured a production-sharing agreement; as a basis for oil and gas exploration in the northern part of the said lake basin.

Tullow Oil Uganda (Pty) Ltd, Neptune Oil and Energy Africa of South Africa were also some of the prospective companies in the region. According to one of the respondents, Tower Resources had acquired the shares of Tullow. This, however, could not be verified, since government officials were reluctant to talk about it. By 2008, about 18 oil companies had been registered to take part in the exploration, exploitation and development activities for petroleum and natural gas in Uganda, even though their level of participation and existence on ground ranged from passive to active.

It is worthwhile to recognise that in Uganda, the government of Norway was supporting the human resource and infrastructural capacity for Uganda to manage the 'upstream' aspects of petroleum and natural gas. The upstream aspects included exploration, development and production. Those aspects were being captured in the draft National Oil and Gas Policy. Meanwhile, the 'downstream' covered areas of refining, transportation (of both crude and refined products), storage, distribution and marketing of petroleum products. The paper, nevertheless, has been unable to ascertain the modality as well as how much Norwegian technical and funding for Uganda was involved.

In order to generally cushion against various risks in case the Norwegian government support stopped rather unexpectedly¹², the Government of Uganda integrated some of the Norwegian supported interventions into the terms of the afore-mentioned USD

¹¹ MEMD, Petroleum Potential of the Albertine Graben Uganda, Petroleum and Exploration Department, September 2006

¹² The respondent reminded the Research Team of this study, about the incidences where some bilateral donors suddenly reduced their funding to Uganda in the FY 2005/06 over governance issues; Norway cut aid by USD 4 million

5 million credit for extension of the SMMRP to June 2011. Why? The incidences that involved Government of Uganda and the bilateral donors over concerns of governance- corruption (including poor transparency and accountability), unfair political play in a multi-party dispensation, etc cannot be ignored. The concerns led to a sudden reduction in funding to Uganda in the FY 2005/06, where for instance, Norway cut aid by USD 4 million.

Essentially, the WB has been part of supporting the country's petroleum and natural gas resource development, including updating the legal, policy, institutional and communication framework for this industry in Uganda¹³. The support has not been in vain and it has paved way for various players in the industry. Discovery tests had confirmed availability of commercial oil reserves in Uganda, e.g. at Mputa field in Kaiso-Tonya area of the basin. One of the prospecting companies, Tullow Oil Uganda (Pty) Ltd and Government Uganda were fast tracking the Early Production Scheme (EPS) to yield diesel, paraffin and heavy fuel oils (for diesel powered thermal power generators). Though production was expected to commence by end of 2009, a new date was given as somewhere in 2012.

REGULATORY MECHANISMS FOR TRANSPARENCY, COORDINATION, ACCOUNTABILITY AND DEVELOPMENT IN UGANDA

Uganda has in place regulatory and tax revenue governance mechanisms to ensure transparency, coordination, accountability and overall national development e.g. in respect to a) Policy b) Institutional c) Legal and d) Tax revenue governance

Policy mechanisms

There is a mineral policy of 2001 that acts as a framework to shape developments, coherence and trends in the minerals sub-sector¹⁴. The policy objectives are to i) stimulate investment in mineral sector by promoting private sector participation ii) ensure that mineral wealth supports national economic and social development and iii) regularize and improve artisanal and small-scale mining. Others are stated as to iv) minimize and mitigate the adverse social and environmental impacts of mineral exploitation v) remove restrictive practices on women participation in the sector and protect children against mining hazards vi) develop and strengthen local capacity for mineral development and vii) add value to mineral ores and increase mineral trade.

¹³ MEMD, 2008/09 Ministerial Policy Statement, 2008

¹⁴ MEMD, Investing in Uganda's Mineral Sector, 2005, p. 4

Legal mechanisms

Legally, all the mineral wealth in Uganda is owned by Government. Government, therefore, gives rights to individuals and companies to do exploration, development and exploitation of the mineral resources, under the Mining Act (1964). Similarly, Article 237 the 1995 Ugandan Constitution vests all land in the citizens in accordance with the tenure systems stipulated therein, but the mineral wealth underground belongs to Government. Government also holds all natural lakes, rivers, wetlands, forests, national parks and other ecologically important areas in trust for the people of Uganda.

In order to operationalise the Mineral Policy of 2001, a new legislation called the Mining Act was enacted in 2003. The Mining Act, 2003 replaced the Mining Act, 1964, for it was obsolete in a number of areas and not in tandem with the aspirations of the country's development and direction. A case in point was where the old Act provided much discretionary powers in its administration as well as limited the size and duration for various licensees.

Under the updated law (Mining Act, 2003), the licensing regime consists of a) Prospecting License – valid for one year b) Exclusive Prospecting License limited to 20 sq. km and c) Special Exclusive Prospecting License for a geographical area greater than 20 sq. km. Both exclusive licenses were valid for one year but renewable. Other types of licenses were the d) Mining Lease- which enables mining operations and is granted for a period ranging from 5 to 21 years e) Location License- limited to 40 acres and granted to small-scale operators for a period of 2 years but subject to renewal. Indeed, by the end of 2004, a total of 225¹⁵ licenses including, 53 Prospecting Licenses, 76 Exclusive Prospecting Licenses, 4 Special Exclusive Licenses, 36 Location Licenses, 17 Mining Leases and 17 Mineral Dealer's Licenses had been issued in the mineral sub-sector in Uganda.

The Mining Act, 2003 further provides for large exploration and mining projects under what is referred to as the Mineral Agreement. This is to facilitate both an investor and the Ugandan government sign agreements that relate to operations in view of stabilizing the legal, social and economic obligations of either party. Like the 1995 constitution of Uganda, the Act provides for fair compensation for the disturbance of surface rights of the landowner or lawful occupier. Such compensation, however, was to take into account the market value of the land and not the value due to presence of a given mineral.

Still, under The Water Act, 1995, Section 31, provides for prohibition of pollution to water, where a person committed an offence when, unless authorized under this Statute, causes or allows a) waste to come into contact with any water b) waste to be discharged directly or indirectly into water and c) water to be polluted.

Institutional mechanisms

¹⁵ MEMD, Investing in Uganda's Mineral Sector, 2005, p.3

On administration and institutional arrangements, the Mining Act 2003 separates powers of the Minister responsible for minerals and those of the Commissioner for Department of Geological Survey and Mines. The Commissioner is the one authorized to grant all mineral licenses while the Minister carries out arbitration functions or settlement of disputes, amongst other responsibilities. There is also a provision for the Minister to waive royalty with the approval of Cabinet, in the interest of mineral exploitation and production.

Tax revenue governance mechanisms

The Government of Uganda in September 2004 scrapped the import and COMESA duties on limestone and other raw material ingredients for cement production. This has remained the case since then.

On royalties, all the minerals obtained from prospecting, exploration, mining and mineral beneficiation are subject to royalty payment to the Government of Uganda, with the details spelt out in regulations to the Act. Regarding taxation, fiscal incentives such as zero customs duty for all mining equipment have been put in place by the government. Meanwhile, a variable rate income tax that oscillates between a minimum of 25 percent and a maximum of 45 percent, based on a given project's profitability margin, has been instituted.

Table 3.1 Revenue for Uganda accruing from royalty (1997 – 2004)

Year	1997	1998	1999	2000	2001	2002	2003	2004
Value (Uganda Million Shillings)	77.6	20.3	11.2	120	299.6	2050	739.1 9	1166.8

Source: Department of Geological Survey and Mine, Entebbe, Uganda

The table above indicates that the mineral sub-sector has registered positive revenue accrual trends for Uganda. The revenues from mining, for example, increased by 40 percent between 1995 and 1997¹⁶, even though to-date the sub-sector still contributes about 1 percent¹⁷ of Uganda's GDP. Through financial and technical support, mainly by the International Financial Institutions, legal, policy and institutional reforms, the revenue growth of the mining sub-sector has contributed to national development objectives, as for example already highlighted in the PEAP and NDP. Likewise the potential contribution remains significant.

It should be noted that the International Financial Institutions, bilateral donors, private sector organizations and other various players have been instrumental in supporting Uganda's Sustainable Management of Mineral Resources Project, the petroleum and natural gas exploration, exploitation and development and related interventions in the extractive sector in Uganda. Specifically, Government's working relationship with the World Bank and Norway led to processes for Uganda to develop National Oil and Gas Policy, beyond the laws and regulations governing the general

¹⁶ <http://www.mbendi.co.za/indy/ming/af/ug/p0005.htm>

¹⁷ MEMD, Investing in Uganda's Mineral Sector, 2005, p.3

minerals sub-sector. This was because of the higher importance and earning expectations compared to the rest of the sub-sector.

Beyond the entire mineral sub-sector 1995 Constitution provisions and the policy, other laws that have a key bearing on governance/ management of the petroleum and natural gas resource in Uganda were the Petroleum (Exploration and Production) Act and National Environment Act. Others included the Local Governments Act and the Land Act, The petroleum (Exploration and Production) (Commencement) Instrument 1989/2000.

The National Oil and Gas Policy is guiding and governing petroleum exploration and production activities in Uganda. The draft policy is driven by the desire to create lasting value to society by ensuring a maximum return on investment in the Uganda oil and gas industry for investors, the government and people of Uganda, and to achieve growth, poverty reduction, and sustainable development¹⁸. Here are some of the key objectives that the oil and gas policy is set to achieve a) to ensure efficient and effective management of Uganda's oil and gas resources b) to encourage transparency in the management and operations of the Industry and c) to encourage early production after commercial discoveries.

Other objectives of the policy are e) to ensure that revenues from the oil and gas sector are properly managed and utilized to create new wealth f) to control the production rates such that any production reservoirs are not damaged or destroyed and g) to encourage as much participation in the petroleum industry as possible h) To ensure that the government receives returns commensurate to the production rates giving due consideration to the recovery of oil company investments at a profit and i) to ensure that oil and gas activities are undertaken in a manner that conserves the environment.

The above highlighted framework has, at least theoretically, provided Uganda with relative capacity to transparency, coordination, accountability and overall national development.

POLICY, LEGAL, INSTITUTIONAL AND TAX GOVERNANCE CHALLENGES TO THE EXTRACTIVE SECTOR RESOURCES IN UGANDA

In spite of the good developments registered above to ensure transparency and good management of the extractive industry resources, Uganda is still faced with several challenges of various latitude and altitude;

LEGAL CHALLENGES

¹⁸ Draft National Oil and Gas Policy, June 2006

Upstream versus Downward stream gaps:

The legal regime in Uganda is by and large, built on the philosophy of 'upstream' aspects, e.g. going by The Petroleum (Exploration and Production) Act. This is in the petroleum and natural gas areas like; exploration, development and production. The governance issue is that Government of Uganda is yet to finalize the development of a comprehensive law to ensure astuteness in the good governance of the exploration, development and use of the oil and gas. On-the-other-hand, 'downstream' areas of petroleum and gas such as refining, transportation (of both crude and refined products), storage, distribution and marketing of petroleum products are to-date not featuring prominently in the current Act.

Contradiction in public interest:

Under the legal regime Article 244 of the 1995 constitution of Uganda provides that mineral resources are held by the State in trust of the people. Article 43 of the Constitution (Amendment) Act 2005, however, vests ownership of minerals and petroleum in the Government-which could easily qualify for the ruling regime/Government. The implication is that Government may not have to be accountable to its people as regards the mineral wealth, yet without being unconstitutional. This shift in the legal regime provides room for adverse governance issues in the mineral resources in Uganda.

No constitutional provision for gas:

While The Petroleum (Exploration and Production) Act had clear definitions for petroleum and natural gas, the Uganda constitution of 1995, including the constitutional amendments of 2005, did not have a definition for gas. The vitality of natural gas in this case, at least by law, is being taken lightly even though both globally and locally, gas remains a fairly lucrative, affordable and viable source of energy. In-other-words, beyond the generic provisions for minerals, natural gas was not constitutionally provided for in Uganda, whether by omission or commission. Ironically, quite often, there was a common reference through the policy to petroleum and natural gas.

Confusion on land ownership:

Uganda's Petroleum (Exploration and Production) Act seems to be contradictory in as far as Clause (1) and under the Mining Act, Clause (3) is concerned. While Clause (1) vests petroleum and other minerals in the hands of Government, Clause (3) continues to provide, *inter alia*, for the interests of individual landowners as regards exploitation of minerals, including petroleum and gas. This kind of provides for different ownership for the same piece of land. Worse still, the petroleum regime does not oblige the companies or individuals undertaking petroleum exploration, exploitation or development to acquire ownership of the land or area in question. The laws instead provide for such companies or individuals with leases, through a license.

IFIs and government protecting contradictory powers:

In the laws of Uganda, for example, under The Petroleum (Exploration and Production) Act provided for the relevant Minister to override the private land

occupier/ owner, "subject to such conditions as the Minister may deem fit", in regard to the petroleum and gas exploration, exploitation and development. Such a situation undermines Article 26 of the 1995 constitution of Uganda on right to property. The Article is further dampened by Sections 40 and 41 of the petroleum Act. Under the Sections, ordinary occupants of land in which petroleum is discovered are predisposed to being oppressed out of their land rights against their conscience and will, but through compensation determined by arbitrators (third parties). This certainly is an issue of transparency and openness of the law, but may in any case curtails Uganda's democratic developments.

Government's unlawful practices:

Section 59 of The Petroleum (Exploration and Production) Act generally is against disclosure of information by a licensee to any person who is not a Government Minister or a public servant, except with the consent of the said licensee. This factor was incumbent to equip government agencies with excuses for secrecy and then stifle tenets of transparency and accountability, including undermining the Access to Public Information Act. This could be ground for denial of public knowledge on revenue earnings, expenditures and related paraphernalia befitting scrutiny by citizens, to promote prudent utilization of oil and gas resources for equitable resource distribution and development in Uganda.

Compromised public transparency and accountability:

Such legal machinery as highlighted above was also fertile to undermining the furtherance of citizens' campaigns construed alongside those initiated by Revenue Watch Institute under auspices of Publish What You Pay (PWYP). Thus, compromising the path to transparency and accountability in the extractive sector in Uganda; and undermining the 1995 constitution further guaranteed citizens' right of access to information in possession of the state.

POLICY CHALLENGES

Upstream versus downstream:

Ordinarily, the law tends to guide policy. The draft National Oil and Gas Policy is given closer attention due to the central position and The Petroleum (Exploration and Production) Act feature strongly on the "upstream" and less on the "downward" aspects of the petroleum and gas industry in Uganda. Government has developed a 2010 Petroleum draft Bill, but it remains to be seen how the final law will squarely deal with issues that are pertaining to oil and gas in Uganda and move towards improving transparency in this industry.

Gaps on how to deal with downward issues:

The National Oil and Gas policy was approved by cabinet¹⁹ during the fiscal year 2007/08. The policy is, albeit, yet to be tabled before Parliament of Uganda for discussion and approval, as a basis in guiding the oil and gas industry in Uganda.

¹⁹ MEMD, 2008/09 Ministerial Policy Statement, 2008

The issue is if the the Early Production System (EPS) that the Government of Uganda was pushing to commence in 2009 and now 2012 is realized before the policy framework is clear, who will lose or who will gain in terms of transparency and management concerns; between the Ugandans and the private firms?

Possible distortion of macro-economic stability;

Is it possible that the discovery and production of oil may not eventually slow down Uganda's economic growth through the 'Dutch Disease' syndrome? African countries have generally shown that with abundant natural resources they were often bent towards being less innovative, but simply dependent on the revenues easily generated from the natural resources, while propagating poverty, staling of oil resources by the ruling regime and the associate mischief.

Meanwhile, oil and gas resources tend to lead to rapid growth of sectors like transport and construction, due to the readily available and accessible petroleum products or revenues from those resources. Since those resources were non-renewable, the macro-economic distortions are likely to have a worse and long-term effect once such extractive sector resources are depleted, after an estimated 50 years in the case of Uganda.

Budget indiscipline and 'rolling-back' democracy;

This is where the discovery and production of mineral wealth, especially oil and gas, is likely to have an unprecedented impact on Uganda's macro-economic stability. Remember the huge mineral revenues are likely to instigate higher temptations and acts of off-budgeting and less respect for public institutions by the Executive and the ruling regime. Such acts would lead to inflation and rolling back of democracy, unless the Ugandan political leadership is careful with our actions and able to manage excitement and greed.

Already, the political establishment and leadership in Uganda has a record for budget indiscipline (e.g. flouting of the financial, legal, procurement, policy and related regulatory framework) as key transparency and good management tenets. So will the extractive sector revenues not suffer similar precedents' of abuse?

Secrecy and inadequate provisions on transparency;

Yes, the draft oil and gas policy, amongst other areas, preaches transparency in the management and operations of the industry. The how is not stated, leaving room for speculation on implementation, given the already visible limitation in the disclosure of information. Cabinet/ Executive, technical officers and cliques of business people are the only ones who seem to have the 'up-to-date' information about the petroleum and gas industry in Uganda. So, the citizens have mainly been limited to periodical statements from the oil exploring companies and a few politicians about the status of the explorations. So, if traces of mistrust are already running high at this nascent stage of harnessing oil and gas in Uganda, how will it be when the dollars from sales begin flowing?

Also, the oil exploration companies as a requirement are supposed to deposit with government every year funds for training of government personnel in oil exploration and production. It has been said that companies have positively responded to this requirement, but how do we know whether the trainings have been carried out, for

who and under what selection criteria? Besides, the exploration companies are required to establish an annual programme to train personnel of the government to undertake skilled and technical jobs in petroleum operations. Who are the beneficiaries and at what cost?

Potential for conflict and security concerns:

From the geo-political point of view, Uganda's entry into the oil economy may attract jealous from any neighborhood or country and lead to animosity. Alternatively, Uganda could become a superior economy that builds up a superior security establishment and position to be a threat to the neighbors. The issues thereof could be a source of regional conflict, e.g. over the lake Albert area that is shared by DR Congo and Uganda (there was a misunderstanding already in 2007, leading to deaths through shooting).

Institutional challenges

Limited capacity, clarity of roles and responsibilities:

Not many people, civil society or otherwise are knowledgeable about the roles and responsibilities of the various institutions, as to demand transparency and accountability from relevant institutions. Besides, which institution o exactly does what is yet to be clearly spelt out in the policy; even though various institutions have been provided for so far a) Ministry of Energy and Mineral Development, through the Petroleum Exploration and Production Department b) National Petroleum Authority c) National Oil Company d) Parliament and e) Cabinet. There is also a proposed National Petroleum Authority to emerge from the current Petroleum Unit. The Unit is currently responsible for the promotion, monitoring and regulation of the "midstream" petroleum aspects –e.g. crude oil sales, crude oil transportation, refining and pricing of locally refined products. It is proposed that the National Oil Company (NOC) will manage the commercial aspects of petroleum activities and the participating interests of the state.

The secondary level institutions will include Uganda Revenue Authority, Ministry of Finance, Planning and Economic Development, National Environment Management Authority and Uganda Wildlife Authority. Others are the National Planning Authority, Ministry of Justice and Constitutional Affairs and the Uganda People's Defense Forces- the national army.

The multiplicity of institutions involved in the administration of the oil resources was itself a challenge, unless there is extreme clarity in mandates, coordination and mutual support. How will this effectively play out given that the bulk of the activities of this infant sub-sector are actually in the hands of the private sector?

Besides, the institutions so far responsible for the management of extractive sector resources in Uganda have exhibited capacity inadequacy. Under the mineral sub-sector, for example, the Department of Geology still lacks sufficient staffing numbers, alongside managerial and technical competence to decisively and

conclusively deal with issues in the sub-sector. So the issue of whether we can simply rely on foreign companies to be in charge of everything about the mineral resources like carrying laboratory tests should be even the bigger question.

Similarly, a few Ugandans had so far been or were being hand-picked, trained and interested by the state to manage the oil production processes. This approach risked not helping much since such individuals were likely to be more loyal to the politicians that selected them, rather than paying allegiance to the nation of Uganda first.

Undermining the legal, policy & institutional regulation regimes:

This may arise out of the natural greed of private sector players who actually dominate the sub-sector. They could undermine the countries legal, policy and institutional, social and environmental regulations in pursuance of their primary motive of profit maximization. After all, the loans acquired through secrecy always risked being tainted with high interest rates and other conditionality not necessarily favorable to the recipient country, in this case Uganda.

Generous Production Sharing Agreements (PSA):

It takes extra steps in Uganda to access to loan agreements and the Production Sharing Agreements (PSA) in the oil and gas industry, are kept under 'key and lock'. Apparently, it is likely that the future of Uganda's oil and gas exploration is already questionable. Uganda PSA's, even then have so far provided for the following;

- Taxation of oil profits at 30 percent based on the Income Tax Act, royalty of 12.5 percent when production is above a certain minimum [7500 barrels per day).
- State participation or equity of 15 percent on all projects and a rapid cost recovery of 40-60 percent of the value extracted when the companies begin production.

This particular PSA between the Government of Uganda and Hardman Petroleum (Uganda) Pty Ltd was studied in more depth. Uganda was to receive 7.5 percent royalties from the gross petroleum production within the contract area (at pay USD 2.5 per sq. km), while the licensee was to retain 60 percent to cover the cost of exploration, development and production. The remaining portion was to be split between government and the licensee on a 70-30 basis, even though government could negotiate for a higher share. So, out of every 100 barrels, an oil firm would take 69.75 barrels and Uganda 30.25 barrels. Further, the licensee would pay training fee of USD 12,000 annually and USD 500 per sq. km. upon commencement of production. Additionally, there was room for a negotiated fee as regarded to what was referred to as signature bonus. The challenge, however, was that this could not easily be verified as some key government officials were reluctant to avail more information.

So, it is possible that Uganda may eventually gain least out of its resource endowment, in comparison with the private sector players who are mainly foreign firms representing interests of the western world.

Corruption:

Uganda's track record of corruption is globally known. For years now, the Government of Uganda has at best largely offered lip-service (and national prayers of late, e.g. in 2010) in fighting corruption. It has excelled in rhetoric on fighting corruption. So, little wonder that the general civil society is not sure whether this track record will not be carried forward into the administration of oil and gas revenues in Uganda. Besides, the 2010 Petroleum draft Bill does not provide checks and balances to protect oil money from corruption- it does not foster good governance, transparency and accountability in a meticulous and explicit way. While there are provisions for the public to monitor the work of the Petroleum Authority, the Bill does not provide for the audit of the oil revenues and this critical function is simply assumed and not given a special status that it deserves, whether through a special capacitated unit under the Auditor General or otherwise.

ENVIRONMENTAL CHALLENGES

Poor environmental management and mitigation measures;

The oil and gas industry risked adversely affecting the wildlife, biodiversity and economy of the Lake Albertine region ecosystem, e.g. along the corridor in which the pipeline will pass. The existing draft policy still falls short of how the mitigation, compliance and environmental management should be actually conducted. This, otherwise, would help in holding the oil companies to be transparent and accountable in their mitigation actions. Ugandans remain skeptical about the capacity of the National Environment Management Authority (NEMA) to manage and reconcile environmental conservation expectations and standards with oil prospect activities.

Destruction of Wild life reserve;

This could have adverse effect on the ecological zones in the areas where prospecting and eventual production will be realized. Apparently, there are concerns amongst civil society that the Environmental Impact Assessment (EIA) report so far produced on the Early Production Scheme did not seem to state in explicit terms how the economic, social and environmental and biodiversity benefits were to be preserved; or how to prevent pollution of air, water and water bodies and resources tourism and community participation in EPS related activities.

OTHER ISSUES IN THE MINERAL SECTOR

Issues pertaining to sharing of benefits;

Is it not possible that communities hailing from areas where the minerals exploitation is taking place will generally get a ram deal? For instance, the people in the Lake Albert region, called the *Banyoro*, were complaining that they could be cheated by companies undertaking mineral exploration, including oil. There has been precedence as a basis for this fear to do with revenues generated from national parks and the forest reserves in the area. Do such communities deserve only social infrastructure?

Land grabbing and forceful evictions:

Complaints involving sinister schemes of land grabbing or suspect actions to take over land in areas of mineral wealth around the country, from the rightful community members have been registered, in the press and also in courts of law. The 2010 Petroleum draft bill provides that land owners in places where the oil and gas has been found, will be paid a 'fair and reasonable' compensation for any disturbances of his/her rights and for any damage done to the surface of the land due to exploration or development operations. While this may be the provision, it is so far a draft position and the question remains; who will account for such illicit actions to the rightful land owners against instances where state machinery, especially soldiers have been involved in perpetuating illicit acts?

Weak civil society in Uganda:

The issues of transparency and prudent management in the extractive industry, inter alia, require a sound civil society in Uganda, beyond merely civil society organizations (CSOs). Civic action is still weak and easily intimidated-whether by state machinery e.g. the police or otherwise.

WHAT THEN SHOULD BE THE ROLE OF DIFFERENT STAKEHOLDERS?

Who are these stakeholders anyway? In the case of Uganda they are, inter alia, the Central Government, Local Governments, the communities where the extractive resources are situated, the media, research and academia. Others are the private prospective companies, civil society organisations, financing institutions and the consumers of the resources from the extractive industry. The roles are of different weight depending on the time and process. The following, nonetheless, could be central on what role they could play in order for transparency and good management to prevail in the extractive industry in Uganda;

- Support and advocacy that Government and private sector players involved in the industry should promote the Publish What You Pay (PWYP) policy and practices on a periodical basis. This will surely enhance the 2003 global Extractive Industry Transparency Initiative (EITI) protocol, otherwise non-disclosure is an incentive to corruption.
- Civil society demand that information pertaining to Production Sharing Agreements (PSAs) be shared out to the public, media, researchers, Parliament and other stakeholders. These are not private agreements but are part of Government stewardship.
- Demand for accountability and transparency in the management and use of resources generated from the extractive industry; to lessen temptations of abuse

and misuse of the said public resources. When information about a public utility is hidden, the utility stops being public.

- Parliament should caution that Uganda does not fall into the temptation of acquiring natural resource base-backed loans, where extractive resources such as oil and gas reserves could be staked as collateral for foreign commercial borrowing.
- Government should institute an all-competent accessible training and placement in the management of resources from the extractive industry.
- Parliament should play a central oversight role in the developments in the extractive sector. In Uganda, the role of Parliament seemed to have been rally limited, perhaps, due to technical limitations, an area that needs to be looked at.
- Civil society, Parliament, media and other agencies should ensure that spending of the extractive industry resources is aligned to the priorities of the National Development Plan and development plans of the Local Governments in Uganda. This will contribute to equitable access of the said resources by the general citizens. For instance, the sectors that have hitherto been underfunded as well as critical funding for socio-economic recovery of northern Uganda that has been devastated by a two-decade war should be a priority.
- Government should be transparent on what rightfully belongs to the communities in terms of revenue sharing and other benefits, to minimise speculation and mistrust.
- There should be a law or policy in place for Uganda, to guide how the country can fully benefit out of extractive sector resources without killing other perennial resources. Under the mining sector, for example, oil exploration, development and production should not undermine government's sustained interventions in sectors like agriculture, fisheries, forestry and tourism.
- There is a strong need to deal with private property, land ownership and usage, so that they are in tandem with the 1995 Uganda constitution, The Land Act, Wild Life Act, the 2010 National Land Policy and related legislation. Civil society and Parliament could take lead in this area.
- Parliament should compel Cabinet in ensuring that natural gas is constitutionally provided for, to guide its development and management. The legal policy should also guide on the management of 'downstream' issues of the oil industry such as transportation of petroleum, construction, co-financing and management of pipelines, refining coupled with domestic and external marketing.

All in all, Uganda has made positive stride in ensuring transparency and good governance in the extractive industry. A lot, however, remains to be done and various stakeholders should ensure that challenges such as those advanced in this presentation are conclusively dealt with as soon as possible. This will contribute to realization of equitable, gender responsive and sustainable national development.